

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 95-720-C - ORDER NO. 95-1179 ✓
JUNE 1, 1995

IN RE: Application of BellSouth Telecommuni-)	ORDER
cations, Inc. DBA Southern Bell Telephone)	DENYING
& Telegraph Company for Approval of an)	MOTION TO
Alternative Regulation Plan.)	DISMISS

This matter comes before the Public Service Commission of South Carolina (the Commission) on the Motion to Dismiss filed by South Carolina Cable Television Association (SCCTA or the Association), an Intervenor in this case. For reasons stated hereinafter, this Motion must be denied.

SCCTA alleges, among other things, that the Application of BellSouth Telecommunications, Inc. DBA Southern Bell Telephone & Telegraph Company (Southern Bell) in this case suffers from a lack of specificity, in that the Application fails to state what services Southern Bell contends are subject to competition under the provisions of S.C. Code Ann. §58-9-575. Further, SCCTA contends that Southern Bell's Application is defective for not including prima-facie allegations regarding competition with respect to its services. In the alternative, SCCTA requests that Southern Bell be required to make the Application more definite and certain by stating with particularity those services Southern Bell alleges are subject to competition.

The Commission has examined this matter and finds that the Motion to Dismiss must be denied.

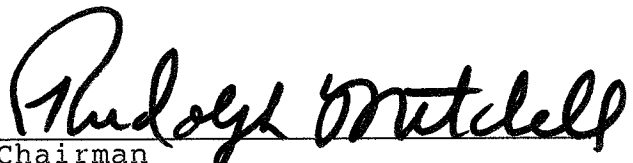
First, the Commission would note that the Commission Staff has an acceptance process, at which time Staff examines incoming Applications for compliance with Commission rules and other pertinent rules. In this case, it must be noted that the Staff accepted the Application in question, therefore certifying that the Application comported with all applicable rules.

Secondly, it must be noted that Rule 8 of the South Carolina Rules of Civil Procedure holds only that an applicant or pleader must include "A short and plain statement of the fact showing that the pleader is entitled to relief." South Carolina case law has held that this Rule requires a pleader to plead the ultimate facts which will be proved at trial "not evidence which will be used to prove these facts." Clark v. Clark, 193 S.C. 415, 361 S.E.2d 328 (1987). Therefore, under the South Carolina Rules of Civil Procedure had Southern Bell filed a formal pleading in a Court of law, its pleading would have been sufficient, in that it stated ultimate facts which must be proven, not evidentiary matters.


Because of the reasoning stated above, the Motion to Dismiss of SCCTA is denied, as is the alternative relief requesting that the Application be made more definite and certain.

This Order shall remain in full force and effect until
further Order of the Commission.

BY ORDER OF THE COMMISSION:


Chairman

ATTEST:

Deputy 
Executive Director

(SEAL)